



COMMONWEALTH of VIRGINIA  
*Office of the Attorney General*

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

Mark R. Herring  
Attorney General

**MEMORANDUM**

**TO:** EMILY MCCLELLAN  
Regulatory Supervisor  
Department of Medical Assistance Services

**FROM:** JENNIFER L. GOBBLE *JLG*  
Assistant Attorney General

**DATE:** September 9, 2016

**SUBJECT:** Emergency Regulations (2<sup>nd</sup> REV.) - GAP Demonstration Waiver for  
Individuals with Serious Mental Illness

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I have reviewed the emergency regulations that would amend the current emergency regulations implementing a demonstration waiver for the Governor's Access Plan ("GAP") for individuals with serious mental illness. The 2016 *Acts of Assembly*, Chapter 780, Item 306.XXX.1.b directed the Department of Medical Assistance Services ("DMAS") to amend the GAP demonstration waiver by modifying the income eligibility level from 60 to 80 percent of the federal poverty level.

Based on my review, it is this Office's view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Virginia Administrative Process Act ("APA"), and has not exceeded that authority. The amendments to the current emergency regulations will enable the Director to comply with the legislative mandate referenced above.

The authority for this emergency action is found in Virginia Code § 2.2-4011(C), which provides that during the period for emergency regulations, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulations. Any such additional emergency regulations shall not be effective beyond the 18-month period from the effective date of the initial emergency regulations.

In accordance with Virginia Code § 2.2-4012, the emergency regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. If the Department intends to continue regulating the subject matter beyond the 18-month period from

the effective date of the initial emergency regulations, it will be necessary to replace the emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations. Va. Code § 2.2-4011(C).

If you have any questions or need any additional information, please feel free to contact me at 786-4905.

cc: Kim F. Piner  
Senior Assistant Attorney General